In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.11203-M of 2007

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Date of decision:9.7.2007

Hawa Singh

.....Petitioner

v.

State of Haryana

.....Respondent

....

Present: Mr. Jagdish Manchanda, Advocate for the petitioner.

Mr. Vikas Chaudhary, Assistant Advocate General, Haryana for the respondent-State.

.....

S.S. Saron, J.

The petitioner prays for pre-arrest bail in the case registered against him for the offences under Sections 323, 324, 326, 307, 506, 148, 149 and 109 IPC.

The FIR has been registered on the statement of Charan Dass who has alleged that on 13.1.2007 he was beaten up by Naresh, Suresh, Nanha, Gagandeep and Madhav Seth. Thereafter, on 17.1.2007 the said accused who were armed with swords and `Gandasis' had chased him (complainant) and he saved himself by taking shelter with some Policemen who were posted at post of Siwan Road, Kaithal. The accused had attacked the complainant with an intention to kill him and while going back had threatened to kill him. They openly threatened that if the complainant did not agree with the views of Head Constable Hawa Singh (petitioner) then they would see him. The prosecution case is that the petitioner being a

Police official has been dealing with the sale and purchase of property as a property dealer. The Police had collected evidence to show that the petitioner has made or received as many as 171 calls on his Mobile phone to or from the accused. Besides, there is a dispute regarding a plot between the complainant and the other accused and on 12.1.2007, the petitioner had met the complainant and had warned him (complainant) that either he should pay a sum of Rs.9 Lacs or he should vacate the disputed plot. In case the complainant failed to do so he would face dire consequences.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated and a reading of the FIR would show that nothing is attributed to him. It is contended that the accused had attacked the complainant and it is alleged that while going they had threatened that if the complainant did not agree with the views of the petitioner they would see him. It is submitted that no injury has been caused by the petitioner nor has any been alleged in the FIR. In fact, the petitioner is working as a Head Constable in the CIA Staff, Kaithal and has been awarded medal by the Inspector General of Police for his outstanding work. A reference has been made to the news item published on 12.1.2007 in `Dainik Bhaskar' in which the petitioner was awarded a medal in the presence of senior government officials. The medal was awarded as 30 persons had been arrested in the murder case of late Narinder Arora. Due to the good work done by the petitioner, he has been recommended for promotion to the post of SHO. The Inspector General of Police and Deputy Inspector General of Police, it is submitted, can promote a person on the basis of his efficient performance. On this account the other police officials have a grudge against the petitioner and he has been falsely implicated in

the present case. The FIR is a manipulation to lower his reputation in the department and also to create a hindrance in his promotion to the post of SHO. The telephone calls which are alleged to have been made by the petitioner through his Mobile phone to the accused persons, it is submitted, are not on the day of occurrence or earlier to that. The allegations of asking the complainant to pay a sum of Rs.9 Lacs or vacate the disputed plot, it is stated, are not mentioned in the FIR. It is submitted that the phone calls were made in the year 2006 as he got information with regard to the murder case of Shri Narinder Arora and to get more and useful information the calls were either made or received which have now been manipulated by alleging that he is doing the work of a property dealer. The petitioner has only one house at Village Lalain, District Karnal and except for the said house he has no other property in the State of Haryana. In the circumstances, it is submitted that the petitioner in the event of his arrested be admitted to bail.

In response, learned Assistant Advocate General, Haryana appearing for the State has submitted that the petitioner is indulging in property dealing and despite being a Police Head Constable he has also been working as a property dealer. It is submitted that 171 calls were made or were received on the Mobile phone of the petitioner to or from the accused. These calls were made or received in the month of December 2006. A list of the 171 calls along with the telephone phone numbers have been submitted. It is submitted that from the allegations made against the petitioner and the material on record require that a thorough and complete investigation is conducted in the case for which the custodial interrogation of the petitioner is necessary. It is further submitted that in respect of the

occurrence of 13.1.2007, FIR No.24 has been registered. Kaptan Singh got his statement recorded in which he stated that he had gone to meet his sister Roshni and his brother-in-law (sister's husband) Sube Singh and Gopal and Suresh were having land in partnership adjoining the Shanni Temple. Suresh and Gopal had gone to the land for doing their work. While they were talking with Lilu (accused) it was stated by the latter that they were in illegal possession of a piece of land and piece of their land was on the side of Gopal and Suresh. On this a quarrel ensued between them. Therefore, it is submitted that the petitioner is not entitled for pre-arrest bail.

I have given my thoughtful consideration to the matter and also perused the record. During the course of hearing the learned counsel for the petitioner has laid emphasis on the fact that the necessary and relevant record is not being supplied to him. It is submitted that the telephone calls which the petitioner is alleged to have made or received on his Mobile phone were only for the purpose of investigation of the case relating to the murder of Narinder Arora. It is submitted that the accused in the said case were police informers and, therefore, the telephone calls were either made or received. This has vehemently been denied by the learned counsel for the State and it is submitted that apart from the present case there are three other FIRs against the petitioners and in order to unearth his various activities indulging in property dealings, his custodial interrogation is necessary. It may be noticed that there are 171 telephone calls that were either made or received on the Mobile of the petitioner in the month of December 2006 from the accused. The question whether these calls were made for the purpose of investigation relating to the murder of Narinder Arora or were made for the purpose of property dealings is not to be

ascertained and gone into by this Court while considering the application of the petitioner for the grant of pre-arrest bail. The same is a matter that is required to be considered and gone into by the investigating authorities. Learned counsel for the State has submitted that the role of the petitioner is to be ascertained as regards the various other property deals that he has been indulging in. His name also figures in the present FIR and it has been alleged that he had threatened the complainant to vacate the disputed plot or pay Rs.9 Lacs. It is well known that considerations governing the Court's decision on an application seeking pre-arrest bail under Section 438 Cr.P.C. are materially different from that seeking post-arrest bail or for that matter even seeking suspension of sentence pending appeal before a higher Court. In a case where pre-arrest bail is sought the advantage of custodial interrogation of eliciting more and useful information and material is to be kept in view. Besides, the exercise of power to grant pre-arrest bail is somewhat extra-ordinary in nature. Keeping in view the nature of allegations and also the role of the petitioner, besides, the fact that the investigation requires his custody to ascertain his role, no ground is made out for grant of pre-arrest bail.

In the circumstances, the criminal miscellaneous petition is dismissed.

July 9, 2007. **(S.S. Saron)**
Judge

hsp